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Press Clippings for the period of November 3 to November 10, 2014
Revue de presse pour la période du 3 au 7 novembre, 2014

Here are a few articles and opinion pieces that might be of interest to AJC members
Voici quelques articles et chroniques d'opinion qui pourraient intéresser les membres de l'AJJ

thestar.com

An open PMO door for a private anti-union bill: Tim Harper

An infamous bill on union transparency will not die because it appears to have been orchestrated by Stephen Harper's office.

Tim Harper National Affairs Columnist, Toronto Star, November 4, 2014

OTTAWA—Stephen Harper's backdoor assault on the labour movement, delivered through a private member's bill from an obscure backbencher, has been rightly labelled hypocritical, punitive and an unprecedented invasion of privacy.

The bill, actually a tax amendment measure known as C-377, has been gutted and rightly been tossed aside as roadkill on the legislative highway.

But it's back from the dead.

The reason it won't die is simple — the bill has been orchestrated by Harper's office and an anti-union lobbyist even if it bears the imprimatur of British Columbia backbencher Russ Hiebert.

Data compiled by the non-profit Canadians for Responsible Advocacy (CFRA) leave no doubt about the access to Harper's Langevin Block office given to an Ottawa lobbyist — a former employee of Harper's opposition office — acting on behalf of eight provincial "open shop" construction associations.

An entity known as Merit Canada has driven the legislation and is, Senate opposition leader James Cowan alleges, "the true author of this unfortunate legislation.''

The bill would require unions and employee organizations to give the Canada Revenue Agency details of all transactions over $5,000, along with the salaries and benefits of union officials over $100,000 and a detailed breakdown of spending on political and lobbying activities. It would all be publicly posted on the revenue agency's website.

In June 2013, it hit a wall in the Senate when 16 Conservatives voted with Liberals and backed amendments championed by former Conservative Senator Hugh Segal that all but gutted the bill.

But when Harper prorogued Parliament, the bill, instead of going back to the Commons in amended form, remained in the Upper House, restored to its original form, where it is now up for second reading.

CFRA compiled data revealing the fierce lobbying battle over this legislation, an effort to shed light on who is funding lobbyists in this town, but in this study it also revealed the uneven paths taken by those on both sides of the bill.

The Merit lobbyist, Terrance Oakey, has a long history with the Progressive Conservative party and its successor Conservative party dating to at least 1999, when he was a special assistant to Joe Clark. He has been a special assistant to the party's national director, worked in the national party's communications department and was a researcher in Harper's opposition office.

Merit is an advocate for an "open shop," in which workers are not forced to join or financially back unions. It actively competes against unionized construction crews.

As Merit's man in Ottawa, Oakey had 117 meetings with public officeholders on the bill since November 2011, but it's his level of access which sets him apart.

He had 13 meetings with Hiebert, but also 12 meetings with Harper's (since departed) director of stakeholder relations, Alykhan Velshi, as well as a meeting with Rachal Curran, Harper's director of policy. Harper's former chief of staff Nigel Wright attended one of the meetings with Hiebert and Velshi. Oakey also had a separate tête-à-tête with Foreign Affairs Minister John Baird.

On the other side, the Canadian Labour Congress says the closest it got to Harper's office in lobbying against the bill was an early 2013 phone conversation between then-president Ken Georgetti and Wright. Georgetti raised it briefly with the prime minister in an unrelated meeting.

The CLC was told there was no time for a face-to-face meeting.

"This guy (Oakey) had open access to the PMO, but for the labour movement, the PMO is a closed door,'' said CLC official Danny Mallett.

The CLC was active. It held 78 meetings with public office holders since Bill C-377 was first introduced in the Commons, but they were almost exclusively with opposition New Democrats and Liberals.

There is a sense in the Senate that Conservatives are now prepared to speed the original bill to passage even though it is scheduled to go back to committee.

“Bill C-377 is an anti-union bill,’’ Cowan said in remarks prepared for Senate debate. “It is designed to bury labour unions in so much paperwork that they will not be able to represent their workers as fully and capably as they do now.’’

Unions are being punished for opposition to government measures, he said, and “this is a message that if you disagree, then the heavy arm of the law can and will be brought down upon you.’’

The bill is also a textbook case about lobbyists’ access in Ottawa.

Merit, according to the CFRA, did not disclose its financial statements, major contributors, bylaws, board member or membership policies but Oakey told the Star all his funding comes from the eight organizations, with Alberta leading the way, although he put no dollar figure on it.

He also dismissed any suggestion he had preferred access to the PMO and painted himself as a little guy going up against a flying squad of labour lobbyists.

“We believe Canadians should have the ability to figure out who is trying to shape their world and why. The best way to do that is to follow the money,’’ says Nicholas Kyonka, the CEO of the non-profit.

On its path to transparency, his organization has also shone light at the uneven road to power under the Harper government.

OTTAWA CITIZEN

Public service still shrinking, but signs show hiring picking up

Kathryn May, The Ottawa Citizen, November 4, 2014

For the third year in a row, the size of Canada’s public service continued to shrink, dipping another 2.3 per cent last year, even as new hiring began to pick up.

In its latest annual report, the Public Service Commission revealed signs the bureaucracy is coming out of a major downsizing and gearing up to hire. More jobs were advertised, more people applied and more were hired, moved and promoted within the bureaucracy than the year before.

“What we are now seeing in the data – and we started to see it turn around last year – is that the demand by departments for new hires is starting to go up. So we do anticipate that we will turn the corner on this and start to hire new graduates into permanent jobs in the coming year,” PSC president Anne-Marie Robinson recently told the Senate finance committee.

In fact, the commission has been active getting the message out that once the downsizing is completed, the government will recruit new talent.

Robinson said the public service is “changing” as it emerges smaller and leaner from the 2012 federal budget cuts, which reduced the number of employees by 10 per cent from March 2011.

But last year also saw the first increase in hiring and staffing, both of which had fallen every year for four years. Overall, hiring and staffing jumped 11.7 per cent over the previous year – a far cry from the hiring spree in the years before the Conservatives froze operating budgets and put the brakes on spending.

All kinds of hiring increased, bringing nearly 36,000 people into the public service last year. Permanent hires increased 31 per cent, after plummeting 63 per cent the year before. The hiring of term employees rose 21 per cent, while casuals increased by 18 per cent and students by nearly nine per cent.

The biggest gain was in the National Capital Region, which saw a 29-per-cent increase in hiring.

The Parliamentary Budget Office has said departments’ plans and priorities reports indicate departments will shed another 8,900 jobs by 2017, which would put total job cuts around 35,000.

Although departments used plenty of students last year, the permanent hiring of recent graduates was down. Robinson also noted that the proportion of employees under age 35 was falling, a worrisome trend.

The public service is an older workforce and this critical under-35 group accounts for only 17 per cent of employees compared to about 21 per cent four years ago. In fact, concerns about the drop in under-35 employees was first raised in 2010 when the number of new hires in that age group fell nearly 30 per cent.

Robinson said people are still keen to work in the public service even though permanent hiring all but ground to a halt as departments rolled out their job cuts over the past several years. Any jobs that did open up often went to the surplus employees on the PSC priority list.

Robinson said the surplus employees "have largely been redeployed in the system now" so departments are getting ready to recruit again based on their earlier workforce and succession plans.

Despite the surge in hiring, more people left the public service than came in. Baby boomers are still retiring in large numbers. Last year, about 6,000 people retired and Treasury Board estimates 8,000 a people a year will be eligible to retire in each of the next three years.

With the job cuts winding down, Robinson argued that the rate of retirement will drive more hiring.

"Now that we're largely through the downsizing exercise, even if the public service stayed the size it is now, which is smaller than it has been historically, we anticipate up to 8,000 retirements per year in the next three years so we're going to have to replace those people with people from outside of the public service," she said.

"So our message to students and graduates is, we need you in the public service and we will be out there and will be recruiting."

The PSC's post-secondary recruitment campaign is typically the government's biggest and most important and last year attracted 26,000 applicants. Recruitment will be highly targeted based on areas where shortages are anticipated.

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Shared Services Canada documents reveal further delays on $398-million integrated government-wide email system

Chief Information Officer with the Treasury Board of Canada, Corinne Charette, said that SSC's ETI is a 'complex task' that 'will require much of the year to accomplish.'

By RACHEL AIELLO, The Hill Times, November 4, 2014

According to documents obtained by The Hill Times, Shared Services Canada's delays on completing the Email Transformation Initiative portion of its mega-government IT consolidation announced in 2011, may be even further delayed than previous reported

and require more work than factored in to the private contract awarded to complete the rollover.

The contract, won by Bell Canada and CGI Information Systems on June 25, 2013 to deliver the new email service known as YourEmail, or your.email@canada.cawas inked at a seven-year, $398-million, or $56-million a year agreement, to migrate 63 different email systems, over 600,000 mailboxes and more than 370,000 users to the new "enterprise email solution," to one, integrated email system, and training them on how to use it. According to SSC's Report on Plans and Priorities (RPP) for fiscal year 2014-15, tabled in the House of Commons on March 6, 2014, the SCC had planned to implement the "four waves" of the ETI to be completed by the end of the fiscal year.

However, an internal SSC schedule of project start and end dates reveals that some government agencies or "partners" will not begin their email transformation to the one, consolidated email system until early 2016. The first phase, transitioning 15 per cent of federal departments, was slated to get underway in March, however, when previously asked about the delays SSC said it was because Bell hasn't been able to meet the committed project deadlines. As of now, none of the email systems have begun migration.

The timeline obtained by The Hill Times indicates that the earliest department to begin the transition to YourEmail will be Shared Service Canada, in February of 2015. It is estimated that this transition will take three weeks, from early adoption to the end of the user migration.

According to a source with a working knowledge of SSC's email systems who spoke with The Hill Times on the condition that their identity not be revealed, the new estimated schedule was communicated to all partners, or department CIOs, or chief information officers in October. The schedule itself, is dated March 21, and shows that more than half of the departments will have been migrated to the new email system by October 2015, but according to the source, there is internal skepticism because there has been very little progress on these migrations since June.

Currently, according to the schedule most departments are using either the 2003, 2007, 2010 versions of the Exchange email system, however, some are still using Domino or GroupWise.

The schedule indicates that the departments that will not begin their email migration until early 2016 are the National Research Council, the Financial Transactions and Reports Analysis Centre of Canada, the Privy Council Office, the Canadian International Development Agency, Canada Border Services Agency, and Public Works and Government Services Canada.

SSC, in an email response to The Hill Times' questions about the schedule, said that the migration schedule for each department has not been finalized as SSC is "still in the process of consulting with departments on proposed timelines for migration," but that the rollover into the new system is still expected to begin in 2015, said Ted Francis, spokesperson for SSC.

Last Tuesday, Oct. 28, at the Canadian Government Technology Event (GTEC) conference's opening keynote at the Ottawa Convention Centre, Chief Information Officer with the Treasury Board of Canada, Corinne Charette, said that SSC's ETI is a "complex task" that "will require much of the year to accomplish."

Further complicating SSC's timely transition to one consolidated email system government-wide appears to be that it requires more staff to complete aspect(s) of the project not covered by the Bell contract. Posted internally on Publiservice, the public servant advertisements and notifications site, on Oct. 22, were three job postings, open to current SSC staff for one-year contracts. The closing date to apply is Wednesday, Nov. 5. Applicants for the positions all require expertise with the ETI, managing, developing and launching email environments as well as experience working in "enterprise-wide initiatives. All the positions require a "secret" level security status.

Specifically, the SSC is seeking six "technical analysts" with a posted salary between $66,000 and $81,000. This position requires a solid understanding of the "service delivery contract between SSC and Bell and technologies within the SSC in relation to mail flows," it reads. The posting explicitly states that the work performed by this team will be to provide technical assessment and assistance with the technical components that are not part of the contract with Bell that are required for implementation, as well as to "execute the technical components of the Exchange implementation not covered by he contract with Bell."

In response to The Hill Times questions about what the technical components not covered by the Bell contract were, and why they were not covered, Mr. Francis said: "The technical adviser will ensure that the contracted technical support meets our Partner's [Bell] needs. The intent of this role is to have a single point of contact within SSC for your.email@canada.ca, to handle any technical integration issues once the system is operational."

The "Technical Adviser" position has a posted salary between $78,000 and $97,000 for the year and will have many of the same requirements of the team leader, in addition to supporting the implementation and operations of the YourEmail service within SSC and will advice on technical implementation requirements.

The SSC is also seeking one "Team Leader" also with a posted salary between $78,000 and $97,000 for the year that will lead the implementation and operations of YourEmail service within SSC. The job posting says that this position is responsible for managing a team of technicians providing IT support regarding the ETI contract. They will oversee the management of all technical work performed by the SSC for "alignment to the contract" and will oversee all technical changes within SSC and Bell as they relate to the "YourEmail" service, while consulting with Bell's service delivery manager.

Externally, SSC has posted on the Government of Canada's job posing website seeking an open number of directors, senior directors and directors general with a posted salary range of $104,600 to $154,300, that have experience at the executive level within the public service, experience in planning, leading, or implementing change initiatives impacting a large enterprise, a federal or provincial department, a Crown corporation, or a large institution, and experience in the development, implementation and

communication of service strategies and business cases to support senior management, and to demonstrate the business value of products and/or services.

The Hill Times asked Bell Canada for comment on the contract, but a media spokesperson for the major telecommunications company said Bell doesn't comment on its customer contracts.

Shared Services Canada reports to Parliament through the Minister of Public Works and Government Services, Diane Finley (Haldimand-Norfolk, Ont.). The department is mandated to deliver email and telecommunication services like Wi-Fi and telephones to the staff within 43 federal departments. The department is also responsible for maintaining data centres, and purchasing any workplace technological devices, as well as providing cyber and IT security services. Shared Services Canada has also actively sought out industry partnerships to help fulfill its mandate.

Ms. Finley, in her address at GTEC on Oct. 28, said that with big changes, like those being undertaken by the ETI, come big challenges.

"Yes, there have been delays in how it has progressed, and I've been very disappointed by these delays, but I'm making sure that we fix the problems and we learn from our mistakes so that these delays don't become failures. And our partners agree with this commitment. They're working to address the problems and deliver a consolidated email solution for the government of Canada," she said.

"We're also learning a lot from the experience. And that's making us more focused and more determined to get this done right. A critical piece of a transformation process is engagement with the private sector and sharing intelligence based on industries best practices."

LeDroit

Les négociations et les élections dans la mire du syndicat

Paul Gaboury, Le Droit, le 8 novembre 2014

L'Institut professionnel de la fonction publique se prépare à tous les scénarios en vue de la prochaine ronde de négociations face au gouvernement Harper. En même temps, il vient de se donner une plus grande marge pour mener de l'action politique lors des prochaines élections fédérales.

Le syndicat représentant la majorité des scientifiques fédéraux et autres professionnels a adopté une position se dotant du pouvoir de prendre part à des activités d'ordre politique en vue, et lors, des prochaines élections fédérales.

« Des temps extraordinaires requièrent des mesures extraordinaires », a indiqué la présidente Debi Daviau. « Ce gouvernement montre à nos membres le chemin de la confrontation et des moyens de pression. Ses attaques à l'endroit des syndicats, et d'autres organisations démocratiques du Canada, sont sans précédent. Ce gouvernement force des organisations non partisanes, comme la nôtre, à faire un choix très difficile entre demeurer silencieux ou s'exprimer. Nous avons choisi de nous exprimer haut et fort ».

Juste avant l'adoption de la résolution, la présidente Daviau avait expliqué au Droit qu'il n'était pas question d'une résolution visant à appuyer une formation ou une autre. « Nous ne voulons pas franchir cette ligne. Mais il s'agit de nous donner les moyens de mener des actions politiques qui nous permettront d'informer les Canadiens afin qu'ils prennent une décision éclairée lors de la prochaine élection fédérale ».

La résolution prévoit ainsi que l'Institut prendra « toutes les mesures nécessaires pour s'assurer que les Canadiens comprennent ce qui est en jeu dans les négociations collectives de la fonction publique fédérale et dans les prochaines élections fédérales, en 2015 » et « expose les préjudices que ce gouvernement conservateur leur a portés pendant la période préélectorale et la prochaine campagne électorale fédérale ».

Dans son allocution, la présidente s'en est prise au gouvernement Harper, et plus particulièrement au président du conseil du Trésor Tony Clement, en dénonçant leurs nombreuses attaques contre la fonction publique, et les services publics en particulier dans le domaine des sciences et de l'environnement.

« Pire employeur »

« Avouons-le franchement : ce gouvernement est probablement le pire employeur que nous n'ayons jamais eu depuis que l'Institut est devenu agent négociateur en 1967 ».

La présidente Daviau a souligné la grande solidarité entre les syndicats du secteur public fédéral et dénoncé la longue liste de changements imposés par le gouvernement pour changer les relations de travail, les mesures contre les syndicats et la fonction publique, au régime de congés de maladie qui sera un des principaux enjeux de la prochaine négociation. Elle craint aussi que le gouvernement ne s'attaque au régime de pensions des employés fédéraux, sa prochaine cible, craint-elle.

Devant l'assemblée, la présidente Daviau a annoncé que la Commission de la fonction publique avait répondu favorablement jeudi à la demande d'audit que le syndicat avait formulé plus tôt cette semaine à la CFP au sujet du « recours excessif » de contrats de sous-traitance à Services partagés Canada.

Elle a en même temps dénoncé les retards dans l'implantation du nouveau système de courriel des ministères fédéraux, un contrat de 400 millions $, qui avait déjà pris six mois de retard et qui n'est pas encore mis en oeuvre.

Union launches political but 'non-partisan' campaign

Kathryn May, The Ottawa Citizen, November 7, 2014

The largest union for white-collar professionals in Canada's public service is preparing for an unprecedented "political" campaign in the 2015 election that some worry could breach the tradition of non-partisanship among bureaucrats.

More than 400 delegates at the annual meeting of the Professional Institute of the Public Service of Canada (PIPSC) voted Friday to "take all necessary" political action – short of becoming partisan – to prepare for the 2015 election and a round of collective bargaining that could end with most members on strike.

"Let's face it, this government is probably the worst employer we've had to deal with since PIPSC became a union in 1967," said PIPSC president Debi Daviau in her opening address.

"After all, the Harper Conservatives didn't drop the word 'progressive' from their name by accident."

For the first time in the union's 95-year history, a motion reached the floor calling for PIPSC to abandon "its traditional stance of non-partisanship" and mount an advertising campaign for the 2015 election campaign targeting the Harper government's "far-right agenda" and "anti-union" policies. That motion was withdrawn in favour of a softer approach.

Daviau said the union isn't endorsing a party or candidates but rather will publicly oppose the Conservatives' record in what it calls an "issue-based" campaign.

"We very much want a change in government," said Daviau. "Are we targeting Conservatives? … In strict partisan terms no, but we will be holding the Conservatives' feet to the fire on the issues that are important to our members.

"We have taken a new stance to be more politically active – still non-partisan – but very active on the issues important to our members and their careers."

With the delegates' support, PIPSC will put together an action plan and advertising campaign for the upcoming election. Many delegates agreed they have no choice with what they see as the Conservatives' assault on the public service, cutting 35,000 jobs by 2017; watering down its bargaining rights; and taking away sick leave. Many expect the government will target pensions in future.

PIPSC's militancy has been growing slowly over the past decade and the first big break with tradition came in 2012 when it joined the Canadian Labour Congress.

This is the first time the union has waded into an election campaign, bringing it closer to the tactics of the giant Public Service Alliance of Canada, the most militant of the 17 federal unions.

Steve Hindle, a long-time PIPSC president who has returned to the union as vice-president, said he is astonished at the growing militancy of the union that, historically, shunned anything to do with politics.

"We have not become partisan at this point but being non-partisan does not mean being apolitical … the politics this country has an impact on the people we represent," he said.

Gary Corbett, a former PIPSC president, said the government's actions have "pushed" the union into becoming more political but he worries it will change PIPSC's "identity" and risk veering into partisan activities.

"We have 56,000 members and some of them like what the Conservatives are doing so they won't agree. It may create dissension in the ranks," he said.

Daviau acknowledged the union will be walking a fine line between "political activity" and non-partisanship.

"We won't be telling anyone how to vote," she said. "We are ensuring members get the information they need to make what we hope will be the right choice … and we are guessing that information we will send them isn't going to incite them to vote Conservative. "

Union gathers signatures against government's sick-leave plan

Kathryn May, The Ottawa Citizen, November 3, 2014

The Public Service Alliance of Canada has gathered more than 18,300 signatures since it posted an online petition a week ago protesting the Conservatives' proposed changes to public servants' sick-leave benefits.

The largest federal union argues the government's plans to replace the existing sick-leave regime with a new short-term disability plan will encourage public servants to "go to work sick" and infect their colleagues rather than stay home unpaid to get better. The union is also attempting to broaden its appeal to all workers to demand the right to paid sick leave.

"No one should face a choice between going to work sick or losing pay," says the petition (http://psacunion.ca/support-healthy-workplaces), which has garnered signatures from across the country.

The 17 federal unions at the bargaining table with Treasury Board negotiators say they are resolved to fight the government's proposal to replace its longstanding banked sick-leave regime with a short-term disability plan. The negotiations have been quietly unfolding behind-the-scenes since the government first presented its bargaining position in September.

The government recently tabled a similar proposal at contract talks with the Crown corporation Royal Canadian Mint to replace its sick-leave credit system with a new short-term disability plan.

The creation of a short-term disability plan is not part of negotiations as such. But the number of sick days and ability to roll over unused days is enshrined in contracts and must be renegotiated.

For the core public service, the government proposes to slash public servants' paid sick leave to five days a year and introduce an unpaid seven-day waiting period before they qualify for new short-term disability benefits.

Under the proposal, the government wants to get rid of the accumulated sick-leave bank, estimated to be worth about $5.2 billion in unused sick-leave credits. It also wants to eliminate the 15 days of paid sick leave public servants now receive under their collective agreements and replace that with five days, or 37.5 hours, a year.

So far, unions have maintained they won't entertain any proposal that demands concessions on the existing sick-leave regime.

PSAC argued the big concern about fewer sick days – combined with a waiting period for short-term disability – is that public servants could end up going to work ill and making their colleagues sick, because they have run out of sick days.

Under the existing contract, public servants can bank unused leave and roll it over year-to-year; bureaucrats have socked away thousands of hours over the years.

The five days of sick leave the government is now proposing cannot be accumulated and carried over. Any unused days would disappear at the end of the year.

The government is calling for an unpaid, seven “calendar day” waiting period which would kick in after public servants use up their allotted sick leave. After the waiting period, employees would be eligible to apply for short-term disability, which would pay benefits for up to 26 weeks.

If they qualify for short-term disability, public servants can collect full pay for four weeks. Pay drops to 70 per cent for the remainder of the 26 weeks.

Employees who are still unable to return to work after 130 days on short-term disability will then go on long-term disability, under the government’s proposal.

The various unions negotiate with the government separately from each other, but they have signed a “solidarity” pact to present a common front on sick leave. They argue the existing system can be fixed rather than starting from scratch with new a new short-term disability plan.

The government wants the new short-term disability plan up and running by September, 2016.

LeDroit

Plus de 22 000 signataires sur la pétition

Paul Gaboury, Le Droit, le 5 novembre 2014

À moins de deux semaines de la reprise des négociations dans le secteur public fédéral, l'Alliance de la fonction publique du Canada fourbit déjà ses armes dans le dossier des congés de maladie, un des principaux enjeux de cette ronde pour le renouvellement des contrats de travail avec le gouvernement Harper.

En moins d'une semaine, près de 22 300 personnes avaient déjà signé en après-midi mercredi cette «déclaration pour des lieux de travail sains» mis en ligne sur le site internet de l'AFPC.

Au cours des deux prochaines semaines, le syndicat espère ainsi amasser le plus grand nombre de signatures de ses membres afin de convaincre le gouvernement qu'il ne peut imposer un nouveau régime comme celui présenté aux différentes tables.

«Cet engouement est un signal que la question des congés de maladie est une question qui touche de près nos membres. Ça commence à être viral. Quand un cinquième de nos membres touchés par cette négociation répond à une pétition en une semaine, cela nous dit quelque chose, souligne Larry Rousseau, vice-président exécutif de l'AFPC pour la région de la Capitale nationale.

Reprise des négociations à la mi-novembre

Les discussions aux différentes tables de négociations, qui s'étaient poursuivies pendant une semaine en septembre, reprendront du 17 au 21 novembre entre les équipes de négociations de l'AFPC et du Conseil du Trésor. Les quatre principaux groupes représentés comptent un effectif de plus de 100 000 syndiqués membres de l'AFPC. Un total de 27 conventions doivent être négociées avec 17 différents syndicats du secteur public fédéral.

«Notre stratégie pour les congés de maladie n'a pas changé. Nous sommes prêts à discuter des améliorations au régime existant, mais il n'est pas question de changer pour un nouveau régime d'assurance-invalidité comme le propose le gouvernement» a indiqué M. Rousseau.

Selon le dirigeant de l'AFPC, ce n'est pas seulement le concept de santé publique qui est en cause, c'est aussi «la façon de gérer un système».

Dans sa proposition, le gouvernement souhaite mettre en place un régime d'assurance invalidité court terme qui serait géré par le privé. Chaque employé aurait droit à cinq jours de congé de maladie par année et les banques de congés de maladie seraient abolies. Le délai de carence pour toucher à l'assurance serait de sept jours.

«Ce qu'il faut comprendre, c'est qu'il n'y a pas de coût direct à l'employeur, les congés de maladie sont gérés à l'intérieur des enveloppes budgétaires et cela ne représente qu'un petit pourcentage des budgets» souligne M. Rousseau.

Si le dossier des congés de maladie risque de revenir au centre des discussions à la mi-novembre, la question des salaires ne devrait pas être abordée avant le début de l'année prochaine.

CBCnews

Pension board that set up offshore shell companies is separate from government, Tony Clement affirms

CBC probe finds civil servants' pensions invested via Luxembourg shell companies to avoid foreign tax

By Zach Dubinsky, Harvey Cashore, CBC News Posted, November 5, 2-14

Cabinet Minister Tony Clement has moved to distance the federal government from a Crown corporation's decision to set up a complex arrangement of offshore companies as part of a tax "avoidance scheme" on pension investments in Europe.

CBC News reported today that the federal Public Sector Pension Investment Board, also known as PSP Investments, used a web of 24 corporations and other entities in Luxembourg and Germany to hold about $390 million in real estate in Berlin between 2008 and last year.

The investment structure allowed PSP Investments — which manages $94 billion in pension funds for federal civil servants, RCMP officers and Canadian Forces members — to avoid close to $20 million in German taxes.

While entirely legal, PSP's own advisers label it an "avoidance scheme."

A senior German tax official called it "a very aggressive way to avoid taxes" and a German MP said it was "hypocritical."

Clement, who as Treasury Board president appoints the pension board's 11 members, emphasized that it is separate from the government.

"PSP Investments operates at arm's length from the federal government. It is not part of the federal public administration, and its business and affairs are managed by a board of directors," he said in a statement Tuesday in response to an interview request.

The revelation that a federal Crown corporation is using an offshore haven like Luxembourg to anchor the very type of complex international tax stratagem Western countries are now attacking could prove embarrassing to the government.

'Key area of concern'

Just on Monday, during House of Commons debate over a budget implementation bill, Revenue Minister Kerry-Lynne Findlay repeated the Conservatives' message that "one of our government's key areas of concern is the issue of international tax evasion and aggressive tax avoidance."

It's a theme that has echoed repeatedly in recent years at meetings of the G8 and G20 countries and at the Paris-based Organization for Economic Co-operation and Development (OECD), in all of which Canada is a member.

Companies like Google and Apple have been using legal loopholes to route profits into Caribbean havens, via subsidiaries in places like Ireland and the Netherlands. Facing tax leakage, countries have vowed a crackdown.

The two German officials interviewed by CBC News both found it distressing that a government would pledge to fight aggressive tax avoidance, but then see one of its own corporations engaging in it.

"It's not up to me to talk about the Canadian government," said Juergen Kentenich, director of the regional tax office in Trier, the closest German city to Luxembourg, who characterized the pension board investment arrangements as "very aggressive" tax avoidance.

"But I do wonder about governments that are involved in the fight against tax avoidance and work with the OECD and G20 to keep it in check, and then do such things themselves. That raises questions."

German opposition MP Gerhard Schick called the Canadian pension board's dealings "hypocritical."

"Our governments should work for better rules, but they should also, in the companies they control, make sure that they are not part of the problem and avoid taxes as aggressively as private investors do," he said.

'In a transparent manner'

Clement, in his statement about the pension board, said: "We expect investments to be done in compliance with laws, rules and regulations, in a transparent manner, while keeping in mind the best interests of its clients."

The point about transparency is yet another concern for critics of companies that exploit tax loopholes.

The PSP Investments holdings came to light in a large leak of records exposing hundreds of global companies' dealings in Luxembourg, where money gets shifted to capitalize on advantageous tax and secrecy rules.

The records were obtained by the Washington-based International Consortium of Investigative Journalists and shared with CBC News.

Separately, CBC applied under access to information legislation to get the same documents directly from the Public Sector Pension Investment Board.

But the files that were released came heavily redacted. In some cases, entire pages were blacked out. It would have been impossible to trace the pension money flows from Canada to the Berlin real-estate holdings.

PSP Investments cited several sections of the Access to Information Act in censoring the documents. Those clauses exempt from disclosure information that could "prejudice the competitive position" or "be materially injurious to the financial interests" of a government institution.

Another clause specifically gives the Public Sector Pension Investment Board the right to withhold financial and commercial information that it "has consistently" treated as confidential.

In an email last week, vice-president Mark Boutet said the pension board's tax dealings have been "transparent."

"Our tax planning fully complies with all laws, rules and regulations, is done in a responsible and transparent manner and is in the best interests of the pension plans for which we manage assets."

In a follow-up email Tuesday, he said: "We respectfully disagree with your characterization of our actions as 'aggressive tax avoidance.' "

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Column: Why Stephen Harper will call an early election

If Stephen Harper waits until next spring, summer or fall, he'll face a political maelstrom as the criminal trials of his disgraced senators get underway.

By R. Michael Warren, Contribution to the Toronto Star, November 9, 2014

Stephen Harper is not the most likable prime minister we've ever had but he ranks among the most politically savvy.

He's assessed the political landscape between now and Oct. 19, 2015 — the last possible date for the next federal election — and concluded an early election is his best hope.

The rationale for Harper calling an election early this winter is compelling:

First, he seems to have deliberately framed his approach to entering the war against Islamic State in a way that made it difficult for either opposition party to support his actions. They complained that Harper was secretive, hyperpartisan and disrespectful.

Maybe he was. But it's left the Conservatives on the politically correct side of this issue. Nearly two-thirds of Canadians support Harper's commitment to send fighter jets to Iraq.

The premeditated murder of two soldiers will serve to further buttress support for the war. It could also help Harper if he strikes a careful balance between security and freedom in his approach to tougher anti-terrorism laws.

Harper now has a plausible pretext for an early election — to seek a clear mandate for the Islamic State war and for his response to domestic terrorism.

Second, at the end of October Harper announced $3 billion for his "Family Tax Cut," which takes effect in this tax year. It would allow families with children to split their incomes to a maximum tax savings of $2,000. Those eligible for the Universal Child Care Benefit would receive increases for every age group. Child Care Expense Deductions are also increased.

In this week's fall economic update, the Conservatives will repeat their "we are sound economic managers" mantra. They will also spell out how Harper plans to spend the rest of his expected $7-billon budget surplus. Expect him to a reannounce the family tax cuts, a doubling of the limit for tax-free savings accounts, an adult fitness tax credit and increased infrastructure spending.

All this is part of the buildup to an early winter 2015 goodies-laden budget.

Third, the Tories have the biggest election war chest. They've started another round of anti-Trudeau attack ads. So far the ads haven't worked against Trudeau. But the cumulative effect may kick in if he shows signs of "not being up for the job."

Fourth, if Harper waits until next spring, summer or fall to pull the plug, he'll face a political maelstrom as the criminal trials of his disgraced senators get underway.

The 49-day trial of suspended Sen. Mike Duffy is scheduled to begin on April 7. Duffy faces 31 criminal counts of fraud, breach of trust and bribery. The trial will remind Canadians of Harper's poor judgment.

Harper may be called to testify. Duffy will take every opportunity to embarrass and undermine his former Tory puppet masters. The proceedings will be magnified by a prolonged media feeding frenzy.

Then there are the many scheduled trials of suspended Conservative Sen. Patrick Brazeau. He's slated to stand trail in late March for sexual assault and assault. His trial for breach of trust and fraud over Senate expense claims starts in June.

The electorate may have forgotten about suspended Sen. Pamela Wallin, but Harper hasn't. The RCMP alleged last November that she committed fraud and breach of trust by filing inappropriate Senate expense claims.

Wallin has since repaid the full amount she owes. The RCMP has been silent about laying charges. If it does, her trial would likely be in early fall, mere weeks before an October election.

None of this will help Harper.

Finally, Liberal Leader Justin Trudeau has led in the polls for 19 months. The longer Harper waits while voters are mesmerized by Trudeau's high-wire act, the more likely it is to become a self-fulfilling prophecy. The longer Harper waits the stronger his opposition gets.

Harper has one major advantage: the power to call an election anytime between now and Oct. 19, 2015. Don't be surprised if he brings in a pre-election budget in snowy February and calls an election for later that month.

He'd be acting in advance of another Senate scandal sideshow. He'd have support for his efforts to contain homegrown terrorists, and could take the nation's pulse before committing to a second phase of the war against Islamic State.

R. Michael Warren is a former corporate director, Ontario deputy minister, TTC chief general manager and Canada Post CEO.

Liberal MP's bill would restore long-form census

Metro News, The Canadian Press, November 5, 2014

OTTAWA - The Commons will debate a private member's bill to bring back the long-form census, the mandatory questionnaire axed by the Conservative government in 2010.

Liberal MP Ted Hsu's proposal would amend the Statistics Act to make the long-form census a permanent feature of the census process every five years.

The legislation would also change the way the chief statistician is appointed, requiring the government to first consult a selection committee.

Hsu has written an open letter to Prime Minister Stephen Harper, calling the census a civic duty that helps give the government reliable information before policy decisions are made.

The Conservatives replaced the mandatory long-form with the voluntary National Household Survey, a switch that was widely panned by voices as diverse as religious groups and provincial governments.

When the results of the 2011 survey were released, data on more than 1,000 Canadian communities was withheld because of the lower response rates.

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Tories lost July court ruling on CSIS spying overseas

The Conservative government said Monday that it lost a Federal Court of Appeal ruling in July that found CSIS hid the extent of its overseas spying activities from a judge.

Tonda MacCharles, Toronto Sar Ottawa Bureau, November 4, 2014

OTTAWA—The Conservative government revealed that it lost an important Federal Court of Appeal ruling that found CSIS hid the extent of its overseas spying activities from a judge.

A redacted version of the decision of the Federal Court of Appeal, dated July 7, 2014, was posted on the court's website Tuesday with no notice to the media — a highly unusual move.

It upheld an earlier Federal Court ruling by Justice Richard Mosley that rebuked the Canadian Security Intelligence Service and the federal government for hiding the fact that CSIS had turned to CSE, Canada's electronic spy agency, and its allied partners in the "Five Eyes" international spying network to carry out intrusive surveillance abroad on two Canadians.

The ruling gives strong backing to CSIS's power to operate abroad.

But Justices Eleanor Dawson, Robert Mainville and Pierre Blais, the recently retired chief justice, declared that a judge's decision to issue a warrant is "not the simple 'box-ticking' exercise the attorney general suggests." And they said CSIS had to level with the courts.

"The duty of candour and utmost good faith required that CSIS disclose to the Federal Court the scope of its anticipated investigation, and in particular that CSIS considered itself authorized by . . . the CSIS Act to seek foreign agency assistance without a warrant. CSIS failed to make such disclosure."

However, the appeal ruling disagreed with the lower court, and found that a Federal Court judge does have jurisdiction to issue a warrant that would authorize intrusive surveillance by CSIS overseas.

"A warrant is required when the (Canadian Security Intelligence) Service either directly, or through the auspices of a foreign intelligence service, engages in intrusive investigative methods such as the interception of telecommunications. In our view, the Federal Court has jurisdiction to issue such a warrant when the interception is lawful

where it occurs. In our further view, it remains an open question as to whether the Federal Court possesses such jurisdiction when the interception is not legal in the country where it takes place."

However, under a bill tabled week by the Conservatives that gap would be fixed.

Bill C-44 would provide explicit authorization for CSIS to seek and use Federal Court warrants to authorize investigative activities — including electronic intercepts and other covert surveillance activities — outside Canada "without regard to any other law, including that of any foreign state."

Public Safety Minister Steven Blaney said in a written statement late Monday the government would appeal the latest Federal Court of Appeal ruling, even as it seeks parliamentary approval for the bill he said is a direct legislative response to the Federal Court of Appeal ruling the government lost — undisclosed until that moment.

In kicking off parliamentary debate on Bill C-44 on Tuesday, Blaney did not even refer to the Federal Court of Appeal loss. But he quoted the twin sister of slain Warrant Officer Patrice Vincent, who was run down by Martin Couture-Rouleau on Oct. 20 in St-Jean-sur-Richelieu, Que.

At Vincent's private funeral last weekend, Blaney said Vincent's twin sister had "asked us to ensure her brother's death is not in vain." He told the Commons all parties had the opportunity to begin that work by supporting C-44.

Opposition parties agreed to study the bill further in committee, but both called for greater oversight.

Lawyers file challenge over B.C.'s approval of Trinity Western law school

ANDREA WOO, The Globe and Mail, November 3, 2104

Lawyers from two Canadian firms have filed written arguments in a legal challenge against B.C.'s Minister of Advanced Education and Trinity Western University over the province's decision last December to approve a faith-based law school that prohibits same-sex intimacy.

The 105 pages of written arguments filed on Monday in B.C. Supreme Court say the minister, Amrik Virk, created a "two-tiered system of legal education" when he gave the

green light to the proposed law school in B.C.'s Fraser Valley. Under the university's community covenant, all students, administrators and faculty must abstain from same-sex intimacy, whether married or not.

"The minister's consent to the Law School thereby causes discrimination against sexual minorities in their access to legal education," the argument states.

Clayton Ruby, a prominent civil rights lawyer who is helping lead the challenge, said the lawyers are seeking "a declaratory judgment that no law school with this fundamentalist, Christian covenant – which discriminates against gays – is constitutional in Canada."

Mr. Ruby's Toronto-based firm, Ruby Shiller Chan Hasan, and lawyers from Vancouver-based Janes Freedman Kyle Law Corporation, initially sought to sue only the ministry; TWU later asked to join the case on the side of the government, which the lawyers did not oppose.

Supporters of the law school note that TWU triumphed in a similar challenge involving the B.C. College of Teachers. In 2001, the Supreme Court of Canada ruled that "absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected."

But lawyers in this challenge say the two are not comparable: The case is not about what kind of lawyers the proposed law school would produce, but the fact that admission requirements are inherently discriminatory and that an openly gay student at the law school would, Mr. Ruby said, be "treated like a second-class citizen."

Trevor Loke, a Vancouver park board commissioner and the public face of the lawsuit as its petitioner, is a gay Anglican who wants to attend law school in B.C.

"He is unwilling to disavow his sexual identity by pledging to abstain from same-sex intimacy and he does not want to be coerced into practising the type of Christianity practised by the Evangelical Free Church of Canada, which is the church affiliated with TWU," the written argument states. "As a result, Mr. Loke cannot access the additional 60 law school places created by the Minister at TWU."

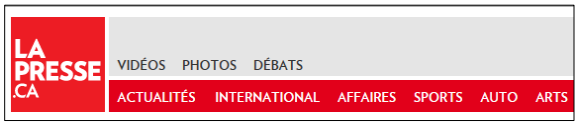
On Friday, the Law Society of B.C.'s board of directors – known as benchers – voted to reverse an earlier decision and uphold the results of a member referendum that rejected accreditation for TWU law graduates. A day earlier, 74 per cent of the society's members who mailed in ballots voted to direct benchers to reject accreditation for the faith-based law school.

Gerald Chan, another lawyer in the case, notes TWU has challenged the law societies in Ontario and Nova Scotia, which have declined to accredit the school, and a challenge of the Law Society of B.C. could reasonably be expected as well.

"We are challenging the most direct decision maker: the governmental actor that authorizes the school to go ahead," he said. "[Mr. Virk's] decision still remains intact. And we think it was incorrect and unreasonable."

The Ministry of Advanced Education did not reply to a request for comment.

The hearing is set for Dec. 1-5. Trinity Western is aiming to open the law school in the summer of 2016.



Cri du coeur pour sauver les «vieux» régimes de retraite

Richard Dufour, La Presse, le 4 novembre 2014

Une voix discordante se fait entendre dans le milieu des affaires. Un des plus importants gestionnaires institutionnels du Québec, Letko Brosseau, se dit scandalisé par la «destruction du système de retraites» au pays.

Les fondateurs de la firme Letko Brosseau, dont 80% des mandats de gestion sont liés à des institutions et des entreprises, croient qu'il est encore possible de corriger le tir, mais que le temps presse si on veut limiter les conséquences sur les individus et l'économie.

Dans la vaste majorité des cas, les régimes de pension d'employeurs sont soit des régimes à prestations déterminées, soit des régimes à cotisations déterminées. Mais depuis la crise boursière de 2001 et la crise financière de 2008, de nombreux employeurs ont converti leur régime à prestations déterminées, jugé trop cher pour les actionnaires.

Problème de cadre réglementaire

Peter Letko et Daniel Brosseau, réputés pour leur discrétion, soutiennent que les employeurs délaissent les régimes à prestations définies principalement en raison du cadre réglementaire en vigueur et que les gouvernements (Ottawa et les provinces) doivent le modifier.

«Les formules élaborées au départ pour calculer les montants à détenir en garantie ne prévoyaient pas un environnement économique comme celui qu'on a connu. C'était pour des variations beaucoup moins importantes dans le temps», dit Daniel Brosseau dans un entretien avec La Presse Affaires.

«La baisse des taux d'intérêt est le résultat d'une intervention gouvernementale explicite temporaire et la formule de calcul pour les régimes de retraite n'a pas été ajustée. Puisque d'une main, le gouvernement a abaissé les taux artificiellement, de l'autre main, il aurait dû ajuster la formule.»

Les entreprises ont été forcées de contribuer à leur régime en période de difficultés économiques, souligne Daniel Brosseau. Il leur a donc fallu peu de temps pour conclure qu'il fallait abandonner ce type de régime.

«On a demandé à des entreprises, pour des raisons artificielles, de mettre beaucoup plus de capital de côté en sachant très bien que les cotisations seront excédentaires. C'est évident que ce n'est pas acceptable. Le cadre réglementaire est pourri. Il y a un problème artificiel qui peut se régler très facilement avec des ajustements temporaires ou en demandant, par exemple, à un groupe d'économistes de poser un jugement sur des rendements futurs raisonnables.

«Les conséquences sont importantes. Il va y avoir de moins bonnes retraites pour les gens. Il y aura aussi moins d'épargne, et cette épargne ira davantage vers les revenus fixes, car les gens n'auront pas la même perception du risque qu'une grande caisse intergénérationnelle. Les actions de compagnies seront détenues par un plus petit groupe de personnes. Et ce sont les actions qui ont généré le rendement historiquement.»

Un pas dans la bonne direction

Au printemps 2013, la majorité des 21 recommandations du comité D'Amours, chargé d'étudier le système de retraite québécois, visaient à assurer la pérennité et la viabilité des régimes à prestations déterminées.

Selon Letko Brosseau, le rapport D'Amours est un pas dans la bonne direction. Mais un pas seulement. «Je voudrais voir la nature à long terme des pensions et l'objectif à long terme de respecter les obligations être mieux reflétés», dit Daniel Brosseau. Le gestionnaire craint que les règles actuelles ne poussent des actifs vers des véhicules qui ne sont pas appropriés.

Les gouvernements hésitent à modifier les règles, notamment par peur d'un autre cas Nortel, selon Letko Brosseau. «Et par crainte d'un événement, on détruit le système de retraites. C'est jeter le bébé avec l'eau du bain. Il y a une carence de bonne gouvernance», dit Daniel Brosseau.

Il faut changer le cadre pour allonger la vision pour les rendements futurs. «Avec les années, un cadre de plus en plus court terme a été imposé pour des actifs à long terme.»

«C'est un problème qui va disparaître aussi vite qu'il est apparu, mais qui va laisser des séquelles. On va abandonner un bon système au cas où les taux pourraient revenir au même niveau qu'aujourd'hui dans le futur. Mais on a vu ça une fois en 100 ans.»

Letko Brosseau dit par ailleurs ne pas avoir reçu de nouvelles de sa lettre envoyée il y a trois ans au ministère des Finances à Ottawa, à l'occasion de la consultation sur la solidité du système de revenu de retraite.

Letko Brosseau en bref

Activité: gestion d'actifs

Nombre d'employés: environ 60

Année de fondation: 1987

Siège social: Montréal

Actif sous gestion: 28 milliards

Prestations déterminées c. cotisations déterminées

Un régime à prestations déterminées promet un flux fixe et garanti de revenus de retraite. La rente est déterminée à l'avance. La pension est fonction des années de service et souvent exprimée en pourcentage du salaire. La plus grande part ou la totalité du risque revient à l'employeur.

Dans un régime à cotisations déterminées, la rente est fonction des sommes accumulées et du rendement réalisé sur celles-ci. L'employé supporte la plus grande part ou la totalité du risque.

CBA calls Victims Bill of Rights Act an important step for victims of crime

Canadian Bar Association press release, November 6, 2014

OTTAWA – The Canadian Bar Association (CBA) welcomes Bill C-32, Victims Bill of Rights Act, calling it an important step for victims of crime.

As a whole it is a responsible piece of legislation," says Eric Gottardi, Chair of the CBA's National Criminal Law Section. He notes that the Bill would generally enhance victims' involvement in the criminal justice process, while respecting the rights of the accused under Canadian law and paying attention to the efficient administration of justice.

Bill C-32 was introduced in April 2014. The CBA had expressed strong concerns about some ideas the government had previously put forward for consultation. "These included

giving victims equal standing with Crown and defence in criminal proceedings, which we believed would be unworkable and negatively impact prosecutorial discretion and the administration of justice," said Eric Gottardi.

Noting that these concerns had been largely addressed in the new legislation, the CBA recommends some changes to improve the Bill's ability to withstand possible constitutional scrutiny, protect prosecutorial independence and ensure that the criminal justice system is actually able to deliver on any rights promised to victims of crime.

The CBA, in its submission, says victims need support, resources and education about the criminal justice process. The CBA recommends that the VBR include the following:

- a framework of victims' rights and treatment during the criminal justice process;
- national guidelines with respect to the treatment of victims in the criminal justice process, and resources to ensure those guidelines are achieved;
- an outline of governments' responsibilities to victims, including measures of practical importance to victims; and
- recognition of victims as key witnesses, not as added parties to the criminal justice process.

Eric Gottardi will present to the CBA submission to the House of Commons Justice and Human Rights Committee on Nov. 6, at 3:30 pm in Room 268, the Valour Building, 151 Sparks St.

The CBA is dedicated to supporting the rule of law, improvements in the law, and the administration of justice. Some 37,000 lawyers, law teachers, and law students from across Canada are members.

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Ontario's expansion of legal aid funding is a step toward fairness: Editorial

A provincial decision to expand access to legal aid in Ontario boosts fairness and promotes smoother operation of the entire justice system.

Toronto Star Editorial, November 3, 2014

It's 18 years overdue and still falls short in fully addressing what's needed, but Ontario's newly announced expansion of legal aid coverage nonetheless marks a dramatic step forward.

About one million more low-income Ontarians will qualify for assistance when expanded eligibility for legal aid is fully rolled out over the next decade. That represents about a doubling of the population covered now and it should significantly ease the number of self-represented litigants in the legal system.

A great many Ontarians currently earn too much to qualify for legal aid but not enough to readily pay for a lawyer's help in navigating the complex legal system. Simply put, proper access to justice is priced beyond their reach.

As a result, more and more people, especially at the lower end of the income scale, are appearing in court without a lawyer. That puts them at considerable disadvantage, and it impedes the efficient operation of Ontario's courts.

In the first stage in its rollout, the government will spend about $96 million over three years to boost legal aid coverage. Change is already underway. As of this past Saturday people needing legal assistance, and earning less than $11,448, are eligible to retain one of 4,000 Ontario lawyers providing legal aid service. The old threshold was $10,800.

The system is complicated; there are several different thresholds, depending on the size of a family accessing help and the type of legal assistance required. But, in general, this 10-year plan constitutes important reform. Thresholds were last changed in 1996.

Critics argue improvements are too little, and coming too slow. New Democrat MPP Jagmeet Singh, a lawyer himself, has correctly noted that the newly announced increase still denies legal aid service to a great many people living below Ontario's poverty line – currently pegged at $19,930 for an individual.

Yes, there is a need for broader assistance than what's been announced. But there are limits to what Queen's Park can do all at once and it makes a great deal of sense to phase in changes over several years. Making a million more people eligible for legal aid in one fell swoop seems a recipe for chaos.

The province is also seriously constrained by lack of federal support. Attorney General Madeleine Meilleur noted that Ottawa formerly paid half the cost of this program but now covers only about 13 per cent.

Despite that, the province is boosting fairness in a meaningful way and providing for smoother operation of the justice system by reducing the number of desperate people forced to represent themselves in court.

Lawyers criticize Tories' victim's rights bill that would give judges power to let witnesses testify anonymously

Justin Ling, Special to National Post, November 2, 2014

Lawyers are openly questioning the Tory government over a provision in new victim's rights legislation that could allow witnesses to testify without identifying themselves in a broad range of criminal trials — including national security cases — warning that the measures are "unprecedented" and likely to be found unconstitutional.

The legislation, Bill C-32 or the so-called Victim's Bill of Rights, is mostly concerned with enshrining services for victims and their families. Yet tucked inside, a third way through the 42-page bill, is a provision that critics say goes much too far by giving judges the ability to order "any information that could identify the witness" to be kept secret in a criminal trial.

While the Conservatives contend that they are merely reinforcing an existing power, lawyers testifying at a Commons committee last week expressed concerns about the broadness of the language, with one calling the change "an unprecedented power."

"It reminds one of medieval inquisitions," says Howard Krongold, a criminal defence lawyer in Ottawa who serves as chair of the legislation committee for the Criminal Lawyers' Association. "It really is Star Chamber justice."

Mr. Krongold, who raised the issue of this section in committee, is referring to a 400 year-old English legal court that operated with confidential witnesses and secret evidence aimed at prosecuting prominent individuals.

Mr. Krongold and another lawyer who spoke to the Post say that, in their reading of the legislation, they expect the bill would allow for proceedings to function as such: the Crown would bring an application to the judge, asking to shield a witnesses' identity. A judge would order a closed-door meeting with only the prosecution present, and decide on the application. If he accepts it, the witness' name would be kept secret, and they could testify anonymously. The defence would be forbidden from asking any questions that have the potential to identify the witness, which could include everything from their address, whether they wear glasses, or even whether they have a history of lying under oath.

When Mr. Krongold voiced concerns in front of the House of Commons Committee on Justice and Human Rights, the Conservatives downplayed his comments.

Bob Dechert, Parliamentary Secretary to the Minister of Justice, told the witness that "it is my understanding that the right to face the accuser is not an absolute principle," going on to note that if a witness' life is in danger — like in a mob or terrorism trial — then a judge may order protection for the witness.

However, Mr. Krongold points out that seemingly the only cases where the Supreme Court has acknowledged a witnesses' right to keep their identity secret are in a pair of cases involving police informants, not witnesses.

His concern stems from the idea that, if pertinent information is withheld from defence counsel, it makes it nearly impossible to cross-examine a witness.

"You really remove all the arrows from a cross examiner's quiver," Mr. Krongold says. "At that point, you really have a sham proceeding."

A spokesperson for Justice Minister Peter MacKay told the Post that the new provision merely codifies what has become common practise, indicating that the only power afforded, here, is a witness' ability to use a pseudonym, insisting that it would protect witnesses from threats and physical harm.

The minister's office did insist, however, that the power would be tightly limited, given that the legislation sets out that a judge may only order a witness' identity to be kept secret where it wouldn't hinder the accused's fair trial rights and the administration of justice.

Michael Spratt, an Ottawa lawyer who works at the same firm as Mr. Krongold, says the power itself inherently contradicts a person's right to a fair trial.

"This provision is perhaps the most unconstitutional provision that I've ever seen," he says, calling it "odious."

Mr. Spratt agrees with his colleague's reading of the legislation, that it forbids disclosure of this relevant information to the defence counsel.

"You say you saw a drug transaction from your apartment — well where is your apartment?" Says Mr. Spratt, imagining one scenario.

Mr. Spratt adds that this provision, "is geared towards national security cases," given that it compliments the powers to hold top-secret trials under Canada's anti-terror laws.

Arguing that there is just about nothing that could improve the idea, Mr. Spratt says "it will either never be used, or if it is used, it will be struck down at the first opportunity."

Lawyers, paralegals can't charge to bring HRTO case on someone's behalf

By Glenn Kauth, Legal Feeds blog of Canadian Lawyer, November 3, 2014

Legal representatives can make a human rights application on someone's behalf but they can't charge a fee to do it, says the Human Rights Tribunal of Ontario.

In G.M.K. v. Lakefield College School, adjudicator Paul Aterman distinguished between charging a fee to represent someone in a case and doing so to bring an application on someone's behalf, something Ontario's human rights legislation allows a person or an organization to do.

Typically, according to the ruling, organizations like unions or non-governmental organizations will bring applications under that provision in the role of the applicant on behalf of the claimant. The idea is to facilitate access to the tribunal, often for people who may be vulnerable for one reason or another, such as immigration status.

"I appreciate that lawyers and paralegals owe a fiduciary duty to their clients and yet charge fees for their services," wrote Aterman. "But this is because they are exercising specialized professional skills in their role as representative of a client. The fee is for the exercise of the authorized representative's skill and judgment.

"By contrast, bringing an application on behalf of another does not require any specialized professional skills. It simply requires integrity and common sense on the part of the applicant."

In G.M.K., Charlene Da Silva of Affordable Immigration and Paralegal Support sought to bring an application on behalf of a student who alleged discrimination in his expulsion from school. The paralegal firm was charging a fee for doing so, according to Aterman, whose ruling noted the student and his litigation guardian were now out of the country. The litigation guardian, one of the student's parents, consented to having the firm bring the application, Aterman noted.

In coming to his conclusions about charging a fee, Aterman considered the legislative purpose of s. 34(5) of the Human Rights Code that allows someone else to bring an application. In his view, charging a fee undermines the legislative intent of enhancing access to the tribunal.

"In circumstance where all other applicants are not required to pay a fee to access the tribunal's process yet this claimant is, the applicant is making a demand of the claimant that is in its interests but not in the interests of the claimant," he wrote.

"To the extent that charging a fee to bring an application inhibits access to the tribunal's process, this is contrary to the legislative intent underlying s. 34(5). It also runs counter to

the tribunal's institutional interest in having an accessible process for all applicants, whether they are applying in their own right or on behalf of another."

For lawyer Nicole Simes of the MacLeod Law Firm, the tribunal was likely trying to send a public policy message about preserving access.

"I think that is the heart of the public policy decision: That they don't want people to be able to charge a fee to bring the application for someone as opposed to being a representative," says Simes, whose firm often deals with human rights matters in the employment context.

"I think it is an attempt to deter the behaviour going forward."

Simes doesn't believe this type of situation will arise very often as lawyers and paralegals have another option: simply have the litigation guardian bring the application and then act as representative in the usual fashion.

"Ultimately, this is a pretty unique situation," she says. "I don't expect that tis type of case would come up very often."

And that includes cases like this, she adds, where the applicants are out of the country. In those situations, she notes, the tribunal will often allow people to attend by phone.

Besides his findings on the fee, Aterman also removed the firm as the applicant.

"In addition, in this case the applicant's failure to understand the difference between its role as an applicant and the role of counsel to an applicant indicates to me that the claimant's best interests are not safeguarded by the applicant continuing in the former role," he wrote.